



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Berkey Marketing Companies

File: B-224481; B-224489

Date: November 20, 1986

---

### DIGEST

1. Protests alleging that requests for proposals were defective because they did not list salient characteristics or evaluation criteria are denied where the solicitations were restricted to one brand name only and contained provisions that sufficiently advised potential offerors that cost would be the determining award factor.
2. Protester is not an interested party to protest that agency's issuance of solicitations restricted to one name brand only and determination of one contractor as the only responsible source resulted in the improper exclusion of a product the protester does not distribute and should, therefore, be canceled, since even if the protests were sustained on this basis, the protester would not be eligible for award because it does not market the product which it claims is excluded.
3. Should a firm, which has not protested its exclusion from the procurements at issue, decide to attempt to meet the government's needs in the future, it should not be excluded solely upon the assumption that its equipment would be far too expensive because that is a question to be decided by the marketplace.
4. Agency's procurement of certain cameras and camera accessories does not unduly restrict competition where agency establishes convincingly that its needs can only be met by one contractor, and while disagreeing with the agency's determination of its minimum needs, protester fails to show that agency's determination has no reasonable basis or, as protester argues, that it has cameras which will meet the government's minimum needs.

---

### DECISION

Berkey Marketing Companies (Berkey), a division of Berkey, Inc., protests request for proposals (RFP) No. F42600-86-R-71097 and RFP No. F42600-86-R-0566, both issued as restricted

037436

acquisitions by the Department of the Air Force, Ogden Air Logistics Center, Hill Air Force Base, Utah. Both solicitations call for Bronica Model ETRS cameras and list GMI Photographic (GMI) as the only approved source. Berkey, which markets Mamiya brand cameras,<sup>1/</sup> protests that the solicitations are unnecessarily restrictive of competition and otherwise defective.

The protests are dismissed in part and denied in part.

#### FACTS

On June 11, 1986, RFP No. -0566 was issued for 50 Bronica Model ETRS still picture medium format cameras for use by the Department of the Navy under a Military Interdepartmental Purchase Request (MIPR).<sup>2/</sup> The Air Force issued RFP No. -71097 on June 12, 1986, for 300 Bronica ETRS cameras and 347 accessory kits (a portion of both of these requirements was also for the Navy's use). The RFP also included options for 229 additional cameras and 267 supplementary kits. The cameras are intended for aerial and terrestrial use for combat and combat training photography, base support photography, accident or incident investigations, and audio visual documentation, using various types of film.

The Air Force states that its decision to procure the cameras and accessories using other than full and open competition procedures, required by the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2301(b)(1) (Supp. III 1985), was based on the results of extensive use and testing of the Bronica, Mamiya, and other brands of cameras.

The agency states that in light of the test results and the "unique and varied military uses [and atmospheric conditions] to which the camera equipment would be subjected," as well as its need for versatile, reliable equipment for the various

---

<sup>1/</sup> GMI and Berkey are the authorized United States distributors of Bronica and Mamiya cameras, respectively.

<sup>2/</sup> The MIPR identified the requested "still picture camera" by a national stock number (NSN) unique to the Bronica Model ETRS and by "Part Number KE58B." This terminology was carried over to the RFP when it was originally issued. The agency states there is no part number "KE58B," which refers to a Purchase Description. Since the Navy had specifically identified the Bronica ETRS by NSN, however, the error was corrected by issuance of amendment 0002 to the solicitation, effective on July 14, 1986, in which "ETRS" was substituted for "KE58B."

kinds of military missions in which it would be used, it determined that the Bronica ETRS and its accessory kits was the only commercially-available brand within an acceptable price range that would meet the government's minimum requirements within the delivery schedule.

Through synopses published in the Commerce Business Daily (CBD), the Air Force announced its intention, under the authority of 10 U.S.C. § 2304(c)(1) to issue the solicitations to GMI, stating as justification therefor that the "supplies . . . required are available from only one source and no other type of supplies . . . will satisfy agency requirements." The agency also prepared Justification and Approvals (J&As) for both procurements for use of other than competitive procedures, as required by 10 U.S.C. § 2304(f).

According to both J&As, GMI is the only source that can supply the Bronica ETRS in the quantities required. The J&As also state that no other camera is available that meets all of the government's minimum requirements for a camera capable of the necessary flexibility, versatility and performance under the various circumstances of uses anticipated. The features of the Bronica ETRS determined to meet the government's minimum requirements and, thus, justify the restriction to one name brand are as follows: -

1. interchangeable film backs with safety interlocks to prevent accidental multiple exposures;
2. electronically controlled leaf shutters incorporated in all lenses;
3. right handed grip that allows the user to trip the shutter and advance the film from the grip;
4. multiple formats to include use of 120, 220, and polaroid film in 6x4.5 cm format, and 35 mm film in 24x36 mm and 24x54 mm format.

In addition to these requirements, the agency justifies the restrictions on the basis that the procurements are the subject of follow-on contracts for the continued development of a major (photography) system, which includes its catalogued inventory (the agency now owns 480 Bronica systems), training and repair programs.

The Air Force's rationale for its requirements may be summarized as follows:

Interchangeable film backs provide for flexibility in the use of the camera by allowing for conversion from one type of film to another without having to complete the film roll or pack already in use and without losing pictures or unexposed frames, even though the film backs are changed in daylight.

The Bronica's three safety interlocks are necessary to preserve photographs already taken while changing film backs and prevent film advances without the release of the shutter, which would produce blank frames. This feature is also necessary to prevent the loss by light exposure of photographs already taken. One of the interlocks prevents removal of the film back without first inserting a dark slide, and a second interlock prevents shutter release with the dark slide in place. These interlocks permit the removal and then reinsertion of a partially used roll of film so that no frames will be lost if a film back is removed before all the frames are exposed on the roll of film it contains. A third safety interlock prevents tripping of the shutter prior to film advancement.

The requirement that each lens have an electronically controlled leaf shutter with a speed range of at least 8 seconds to 1/500 second, as opposed to the provision of a single focal plane shutter located within the camera body, is justified on the basis that electronically controlled leaf shutters allow synchronization of electronic flash at all shutter speeds, which is necessary, for example, when electronic flash is used to fill in shadows in subjects lit by ambient light. In addition, the Air Force states it prefers leaf shutters for general photography because it is characteristic of focal plane shutters to distort lines of objects moving in the same direction as the shutter curtain and the greater mass of moving focal plane shutter parts causes more camera movement than do leaf shutters. The provision of leaf shutters in each lens is necessary for greater reliability because if the shutter mechanism fails, the camera is still operative with the substitution of another lens.

The right handed hand-grip, designed to mount on the right side of the camera and to support the weight of the camera's body/lens/film back units and accessory flash equipment, allows the user to advance the film manually, cock and trip the shutter, all with the thumb or index finger of the hand holding the camera unit, and to activate the light meter for

electronic flash. This feature is required because the user frequently has only one hand available for operating the camera, the other hand being used to maintain stability in an aircraft or other moving vehicle.

In response to these solicitations, Berkey submitted timely proposals. Berkey also filed in our Office protests of the restricted solicitations prior to the respective closing dates for receipt of proposals. The protester contends that the solicitations are unduly restrictive of competition, that they exceed the government's minimum needs, and that the solicitations are defective and must, therefore, be canceled because they do not identify the criteria by which offers will be evaluated. Berkey further maintains that to the extent the solicitations may call for a brand name or equal product, they are defective in that they do not identify the salient characteristics of the named brand.

More specifically concerning the solicitations' restriction to the Bronica ETRS, it is Berkey's position that it "can provide cameras and accessories which are not the named brand but which meet all the actual minimum needs of the Air Force" (emphasis added), and that it is precluded from participating in these two procurements because of the brand name restrictions.

#### ALLEGED SOLICITATION DEFECTS

We first address the protester's allegation that, to the extent the solicitations may represent brand name or equal requirements, the solicitations are defective in that they do not identify salient characteristics of the named brand or state the evaluation criteria. In response to these allegations, the Air Force states that the procurements are not for a named brand or equal, but for named brand equipment only. The agency states, and we agree, that the provisions of the Department of Defense Federal Acquisition Regulation Supplement (DOD FAR Supp.), § 10.004(5)(3)(i)(B), which require the identification of salient characteristics apply only to "brand name or equal" solicitations, not to solicitations restricted to one name brand only.

Concerning the issue of evaluation criteria, the protester acknowledges that the RFP incorporates by reference the clause prescribed in FAR, 48 C.F.R. § 52.215-16, but is of the view that this clause does not adequately state the basis upon which award will be made. The clause states, in relevant part, that award will be made to the responsible offeror whose conforming offer ". . . will be most

advantageous to the Government, cost or price and other factors, specified elsewhere in this solicitation, considered." Although Berkey says the solicitations do not specify any "other" factors to be considered in evaluating proposals, in view of the fact that the solicitations call for Bronica brand equipment, we think it was clear from the solicitation that cost would be the determining award factor in the event that a responsible offeror other than GMI submitted a conforming proposal. See Squibb Vitatek, Inc., B-208153, Mar. 29, 1983, 83-1 C.P.D. ¶ 320 at 3.

#### ALLEGATION OF OTHER POTENTIAL OFFERORS

In support of its position that the solicitations unduly restrict competition, the protester asserts that the Air Force "acknowledges . . . that there are several potential offerors capable of . . . supplying Bronica brand equipment." In so stating, the protester misstates the Air Force's position and ignores its justification for listing GMI as the only approved source--that is, as previously stated, that GMI is the only source capable of supplying the equipment in the quantities required within the delivery schedules. When initially issued, RFP -0566 included a Form 805 (Engineering Data Requirements) as an attachment, which listed 12 "approved vendors of ETRS, accessories kit" (including GMI). The protester has consistently raised the inclusion of this list of vendors (all but GMI are retail camera stores) as support for its contention that there are other approved sources for the Bronica equipment solicited and that, therefore, the solicitation improperly names GMI as the only approved source.

In raising the inclusion of this document in the solicitation, the protester disregards the agency's issuance, on July 14, 1986, of amendment 002 to RFP -0566, which deleted in its entirety the Form 805 attachment. The agency has explained that the attachment was deleted because, after the solicitation was issued, it was discovered that the attachment had been included in error since GMI was the only responsible source.<sup>3/</sup> Moreover, even if the agency had not

---

<sup>3/</sup> We note that in accusing GMI of "unlawful restraint on competition" and alleging that GMI, as the "exclusive American distributor for Bronica cameras, will not permit its dealers to obtain sufficient cameras on normal commercial terms so that they could compete against GMI for this procurement" (matters not within our jurisdiction), Berkey appears to be aware that the vendors listed in the attachment are, in fact, not capable of supplying the equipment in the quantities required.

amended the solicitation to delete the attachment or determined GMI to be the only responsible source, Berkey's position would not have been more favorable since it does not offer Bronica camera equipment. We find, therefore, that the protester's contention on this basis is without merit.

In further support of its contention that the solicitations are unduly restrictive of competition, Berkey states that the Air Force has "admitted" that a brand other than Bronica (Hasselblad) meets the government's minimum needs. Berkey is referring to a parenthetical statement made in memoranda of law accompanying the Air Force's reports, in which it was stated that as a result of extensive testing and use of the Bronica ETRS and other cameras, it determined that the Bronica ETRS was the:

"only commercially available item within an acceptable price range that would meet the government's minimum requirements. (The Hasselblad brand of camera meets the government's minimum needs but is far too expensive to be the subject of a government procurement at this time.)"

Berkey argues that in spite of the cost of the Hasselblad brand camera, since the agency states that it would meet its minimum needs, the brand name only restriction is not justified by the minimum needs of the Air Force and for this reason the solicitation should be canceled.

Under our Bid Protest Regulations, a party must be "interested" before we will consider its protest. In general, we will not consider interest to be sufficient where the protesting party would not be eligible for award, even if we resolved the issue raised in its favor. Coulter Enterprises, Inc., B-216800, Apr. 23, 1985, 85-1 C.P.D. ¶ 463 at 2. In this case, even if the solicitations were canceled and reissued to relax the restriction so as to include the Hasselblad brand camera, Berkey's economic interest would not be affected thereby since it is the distributor of the Mamiya brand camera, and not Hasselblad. Furthermore, no distributor of the Hasselblad brand camera has protested the solicitations in our Office. Thus, we find that Berkey is not an interested party to protest the name brand restriction of the subject solicitations on the basis that the Hasselblad brand camera would meet the agency's minimum needs. See Endure-A-Lifetime Products, Inc., B-219529.2, Oct. 11, 1985, 85-2 C.P.D. ¶ 404.

Apart from the fact that Berkey would gain no economic benefit from permitting Hasselblad to compete, since Hasselblad itself has not protested its exclusion from these procurements and since none of the parties has furnished any specific discussion of the design and capabilities of Hasselblad equipment, the record provides no basis on which we may judge the accuracy of counsel's statement that Hasselblad equipment could meet the government's minimum needs. There appears to be no disagreement that as a general proposition Hasselblad equipment is appreciably more expensive than the Mamiya and Bronica products which are the subject of this decision. We recognize that the Air Force may consider itself as doing no more than recognizing economic reality in anticipating what Hasselblad equipment may cost. Should that firm decide to attempt to meet the government's needs in the future, however, that question should be decided by the marketplace, not preempted by assumptions no matter how seemingly well-founded.

#### BRAND NAME RESTRICTION

Since the solicitations which are the subject of this protest are restricted to the Bronica ETRS, which Berkey does not offer, clearly the crux of the protest is the agency's determination that only the Bronica ETRS and its accessories meet the agency's minimum needs.

Berkey charges that the solicitations were issued in violation of CICA because the Air Force's J&As, citing to 10 U.S.C. § 2304(c)(1) as authority for their issuance as restricted procurements, do not support the brand name restrictions. The protester maintains that the cited provision "permits the use of noncompetitive procedures when there is 'only one responsible source' for the needed supplies" and, therefore, pertains to sole-source procurements. As we previously stated, the solicitations were issued as having only one responsible source--GMI--and the protester does not deny that GMI is the only source which can supply the Bronica ETRS and accessories in the quantities required within the delivery schedule. Thus, the Air Force's J&A citations to 10 U.S.C. § 2304(c)(1) are not inapposite, particularly since in this case the solicitations' restriction to one brand name resulted in sole source procurements. See Daniel H. Wagner, 65 Comp. Gen. 305 (1986), 86-1 C.P.D. ¶ 166.

Berkey further argues that the solicitations are unduly restrictive of competition on the basis that the Air Force's minimum needs do not justify a brand name only procurement



since the Mamiya "cameras" and accessories it markets meet those needs.

Generally, when a solicitation is challenged as unduly restrictive of competition, the initial burden is on the procuring activity to establish prima facie support for its contention that the restriction is justified. The adequacy of a justification is determined by examining whether the agency's explanation can withstand logical scrutiny. R.R. Mongeau Engineers, Inc., B-218356, B-218357, July 8, 1985, 85-2 C.P.D. ¶ 29. Once the prima facie support is established, however, the burden shifts to the protester, to show that the allegedly restrictive provision is unreasonable. Libby Corp., et al., B-220392, Mar. 7, 1986, 86-1 C.P.D. ¶ 227 at 3-4. Although sole-source procurements under CICA are subject to close scrutiny by our Office, WSI Corp., B-220025, Dec. 4, 1985, 85-2 C.P.D. ¶ 626, we will not upset an agency's decision as to its needs and the best method of accommodating them absent a clear showing that the decision was arbitrary or unreasonable, since officials of the contracting agency are most familiar with the conditions under which supplies will be used. Engine & Generator Rebuilders, 65 Comp. Gen. 191 (1986), 86-1 C.P.D. ¶ 27.

With reference to the government's needs for these requirements as determined by the Air Force, Berkey maintains that the Mamiya "cameras" it distributes can meet the requirement for interchangeable film backs with locks to prevent accidental multiple exposures. Concerning the safety interlocks, the protester explains that after a picture is taken with the Mamiya camera, "the shutter cannot be tripped when the film back is replaced until the film is advanced to the next frame" or "if the film back . . . is removed before the film is advanced to the next frame, the shutter cannot be tripped when the film back is later replaced until the film is advanced to the next frame."

With respect to the Air Force's requirement that the cameras have electronically-controlled leaf shutters, Berkey tacitly admits that the Mamiya does not have a leaf shutter in each lens but a focal plane shutter in the camera body. Berkey maintains, however, that there is "no justification whatsoever" for the Air Force's requirement for leaf-shutter lenses to the exclusion of focal plane shutter cameras. The protester expresses the view that focal plane shutters are generally preferred because they (1) contain fewer moving parts and, consequently, have a lower failure rate and are simpler to repair than leaf shutters; (2) are capable of

higher maximum shutter speeds than leaf shutters and, therefore, have a greater "stop action" capability; and (3) result in lower costs for lenses because each lens need not incorporate a shutter mechanism. Berkey also asserts that the previous superiority of leaf shutters over focal plane shutters with respect to fill-in electronic flash photography has been eliminated by recent electronic flash technology.

Berkey also maintains that, like the Bronica ETRS, Mamiya cameras also offer a right hand power drive, a device which may be attached to the right side of the camera and serves as a grip for holding the camera and permits the user to trip the shutter and advance the film automatically with the same hand that is holding the camera.

We note, however, that the Mamiya right hand grip is different from that of the Bronica in that it is power driven and advances the film automatically, whereas Bronica provides for manual operation. The Air Force states, and the protester has not denied, that because the power driven hand grip adds significantly to the weight of the camera, it restricts the use of the camera and inhibits the user's ability to steady it while photographing.

Finally, concerning the Air Force's need for multiple format capability in these cameras, Berkey contends that its Mamiya cameras can use 120 and 220 roll film and polaroid film packs in 6x4.5 cm format and 35 mm film in a 24x36 format. The protester concedes that it does not commercially offer a 35 mm film back in 24x54 format, but disputes the usefulness of and necessity for this accessory.

Of significance to the resolution of the issues presented by the protester's description of the capabilities of the "cameras" it offers is that in the majority of its discussion, Berkey does not identify the specific Mamiya model which it claims meets the government's minimum needs. Berkey and the Air Force, however, have mentioned two specific Mamiya camera models--the M645-1000S and the newer M645 Super--in the context of possible alternatives to the Bronica ETRS. We believe the record establishes, however, that the models differ from each other, and from the government's statement of its minimum needs, in the following respects.

With reference to the M645-1000S, the Air Force states that it does not have removable film backs and is restricted in capability to two films--120 and 220--and one format--6x4.5 cm. (Although protester's counsel asserts the

M645-1000S can utilize polaroid pack and 35 mm film, we do not find this contention supported by the record.) In addition, the record shows that the M645-1000S is a focal plane shutter camera, not one with electronically-controlled leaf shutters in each lens, and does not have a right-hand grip permitting manual film advance and shutter release.

The M645 Super features removable film backs which accommodate 120 and 220 roll film and polaroid film pack in 6x4.5 cm format, and 35 mm film in 24x36 mm format. Although the M645 Super appears to conform more closely to the Air Force's needs than does the M645-1000S, even the M645 Super features a focal plane shutter, a heavier battery-powered automatic motor drive to advance the film and release the shutter with one hand, and the protester does not claim to market for it a 35 mm film back in 24x54 mm format. Berkey has also described the safety interlocks on Mamiya cameras in such a manner that we cannot determine whether they are equivalent to those on the Bronica ETRS.

In short, we believe the protester has not established that either the Mamiya 645-1000S or the M645 Super meets all the requirements which the Air Force states represent the government's minimum needs in the applications in which these cameras will be used. For the following reasons, we also cannot conclude from this record that the protester has clearly shown that the Air Force's definition of those needs is arbitrary or unreasonable.

Although there are similarities between the Mamiya and Bronica cameras, they do incorporate fundamentally different types of shutter mechanisms, whose relative advantages and disadvantages have been discussed at length by the parties. Whether one shutter type is "better" than the other would seem to largely depend on the value to the user of the characteristics inherent in each design.

Leaf shutters, as used in the Bronica, consist of a set of overlapping metal blades arranged in a circle and located between the glass elements of the camera lens. When the shutter is released, the leaves open outward to expose the entire image area and then close to complete the exposure. Although the length of time taken by this process will vary according to the shutter speed set by the user, there is a point in every exposure when the shutter is fully open and the entire image area is uncovered and subject to exposure, e.g., by electronic flash. A leaf shutter is, therefore, said to "synchronize" with electric flash units at all shutter speeds.

A focal plane shutter, as used in the Mamiya, is located in the camera body in front of the film and consists of two overlapping curtains one of which follows the other across the image area to make the exposure. At lower shutter speeds, the first curtain, which covers the film prior to the exposure, completes its travel across the image area to the other side before the second curtain begins to follow it to re-cover the film and complete the exposure. Therefore, at these speeds there is a period--which varies with the shutter speed set--when the entire image area is fully open to light. At higher speeds, however, the second curtain begins to follow the first curtain before the latter has completed its travel. The result is that the exposure is accomplished by a moving slit or window which travels across the image area, providing each portion with the correct exposure but the entire image area is not exposed to light simultaneously. Therefore, in contrast to all speeds of a leaf shutter and the lower speeds of a focal plane shutter, higher focal plane shutter speeds do not synchronize with electronic flash units. This is because the emission of an electronic flash unit is so brief that at these higher speeds, only that portion of the film uncovered by the "moving window" will be exposed when the flash is discharged.

The Air Force takes the position that one advantage of a leaf shutter of value to it is the shutter's ability to synchronize its opening, at all shutter speeds, with the emission of an electronic flash unit. The agency maintains that this provides a photographer with the flexibility of being able to fill in shadows through the use of flash where conditions otherwise necessitate the use of high shutter speeds.

In arguing that this fill-flash capability no longer is an advantage of a leaf-type shutter, Berkey speaks in general terms of "focal plane shutters" which not only can achieve higher maximum speeds ("in excess of 1/2000 of a second") than leaf shutters, but of focal plane shutters which are capable of synchronizing with electronic flash at speeds of up to 1/200 second. Berkey argues that by employing electronic flash units with variable light output "while using a shutter speed of up to 1/200 of a second, a camera with a focal plane shutter can achieve at least the same level of flexibility [as a leaf-shutter camera] in taking flash pictures." (Emphasis added.)

With regard to this argument, we first note that Berkey does not attribute the focal plane shutter speeds used in its illustration to any specific brand of medium-format camera

which might be offered in satisfaction of the Air Force's needs, including the Mamiya, which the record indicates synchronizes with electronic flash at a shutter speed of 1/60 second. We do not find persuasive an argument not tied to the capabilities of the specific type of product being procured. Moreover, Berkey has not explained how the flash-lit portion of the subject can be evenly illuminated with medium format, focal plane shutter cameras if other considerations require the use of shutter speeds higher than that at which a focal plane shutter synchronizes with electronic flash. The protester also has not shown the Air Force to have been arbitrary in its preference for a type of shutter which does not produce distortion of moving objects under certain situations and which does permit a camera to be made operable with the substitution of another lens should the shutter mechanism fail. We, therefore, cannot conclude that the Air Force's requirement for a camera using leaf-shutter lenses is unreasonable.

Considering the various uses to which these cameras may be put, we also do not believe the protester has clearly shown that it is unreasonable or arbitrary for the Air Force to specify a hand grip, not dependent on battery power, with which the camera can be operated with one hand or for the Air Force to seek the flexibility afforded by interchangeable film backs in multiple formats which permit the user to change from one film type or format to another, even in mid-roll, while preserving those photographs already taken and not wasting unexposed film in the remainder of the roll.

In view of the above conclusion, we need not consider the propriety of the second basis for the Air Force's restriction of these procurements.

*Harry R. Van Cleve*

Harry R. Van Cleve  
General Counsel